

CITATION: *Scott Newhouse v Northern Territory of Australia* [2004] NTMC 060

PARTIES: SCOTT NEWHOUSE

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20313874

DELIVERED ON: 6th August 2004

DELIVERED AT: Darwin

HEARING DATE(s): 27th July 2004

JUDGMENT OF: Judicial Registrar Fong Lim

CATCHWORDS:

Assessment of quantum – economic loss

REPRESENTATION:

Counsel:

Applicant: Ms Truman

Respondant: Ms Tregear

Solicitors:

Applicant: Halfpennys

Respondant: Hunt & Hunt

Judgment category classification: C

Judgment ID number: [2004] NTMC 060

Number of paragraphs: 18

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20313874

BETWEEN:

Scott Newhouse
Applicant

AND:

Northern Territory of Australia
Respondant

REASONS FOR JUDGMENT

(Delivered 6th August 2004)

Judicial Registrar Fong Lim:

1. The Applicant has applied for an Assistance Certificate to issue in his favour arising out of an assault on the 24th January 2003. There is no dispute between the parties that the Applicant was a “victim” in terms of the Crimes (Victims Assistance) Act and that an Assistance certificate should issue in his favour. The only issue to decide is the quantum of the certificate.
2. The Applicant relied on his own affidavit of 17th of May and the medical report of Mark Reid a Neuropsychologist dated 24th November 2004.
3. The physical injuries suffered by the applicant were lost of consciousness, several fractures to the skull, bruising to the right side of his face. The Respondent took issue with the description of the injury and described it as a fracture to the face and not the skull.

4. The Applicant states he continues to have regular headaches, fatigue and short term memory loss and numbness on the right side of his lips.
5. The report of Mr Reid suggests that the Applicant's cognitive functioning was not affected by the injury however he has a mild short term memory loss and some difficulties with new learning. Mr Reid suggests that the Applicant's short term memory loss and difficulty with new learning is consistent with a mild brain injury.
6. The Respondent challenged Mr Reid's qualifications to diagnose a mild brain injury as a Neuropsychologist.
7. The Respondent argued that the x ray report in the Royal Darwin Hospital notes supported injuries to the front of the head in the cheekbone area not the back or top of the head. However, the inpatient clinical progress notes of the hospital suggested that the CT scans showed a "depressed skull fracture of the right Parietal" which is at the rear of the skull. There seems to be an internal inconsistency in the hospital file. There is no medical evidence to suggest that either sort of injury could or could not lead to a mild brain injury.
8. **Pain and Suffering and Loss of Amenities of life** -The issue between the parties is whether or not the Applicant has suffered any lasting brain injury which has effected his ability to learn new things and to have short term memory loss.
9. The Respondent challenged Mr Reid's qualifications to diagnose a brain injury particularly as the hospital records do not show that there was any indication of neurological dysfunction at the time the Applicant was examined in hospital. The Respondent argued that the neurological examination showed normal and it was clear from the hospital notes that the main focus was the facial injuries sustained by the Applicant.

10. It is clear from the hospital records however that the medical staff were concerned enough about neurological injury to require the Applicant to remain in hospital for 24 hours for observation.
11. The hospital records show that the Applicant had discharged himself against the advice of the doctors and the Respondent argues this also indicates that the Applicant had not suffered any brain injury. It is my view that this action by the Applicant is not indicative of brain injury or otherwise. It could be that he had an aversion to hospitals or that he was not thinking straight because of a brain injury or any number of reasons.
12. The Respondent also pointed out that the Applicant only had one visit to his doctor 5 months after the assault and that in itself shows an uneventful recovery by the Applicant. This could also indicate that the Applicant was a person who preferred not to see doctors unless he thought it absolutely necessary. It should be noted that it was the Applicant's father who took him to hospital 2 days after the assault because he was sleepy and vomiting and that would support the view that the Applicant just did not think of going to seek medical help even if he should have. I accept that if the Applicant had claimed that he suffered severe pain because of the injury that one visit to the doctors would be inconsistent with his claims however he is only claiming that he has had regular headaches, fatigue and some dizziness which stopped him from working as a self employed pool cleaner for 6 weeks.
13. The Respondent also challenged Mr Reid's opinion that the short term memory loss and difficulties with new learning was caused by the injury. I agree that the conclusion can only be reached if Mr Reid had some pre morbid data to compare the Applicant's performance in the relevant tests. I have no doubt that the Applicant's mild deficiencies could have been caused by the injury but equally he could have had those problems prior to the injury. I cannot accept that the injury has caused the applicant's difficulties

with new learning. However the Applicant's claim that his memory is not what it used to be prior to the assault along with Mr Reid's that there is some short term memory loss I find that on the balance of probabilities his mild short term memory loss has been caused by the assault.

14. Whether or not the Applicant has suffered a brain injury is not something that I can confidently conclude given the inconsistency in the hospital records. The Court does not have medical training and can only be guided by the evidence before it. Nevertheless I can find that the Applicant was a victim of an assault which has left him with a mild short term memory loss which he did not have prior to the assault and on the balance of probabilities was caused by that assault.
15. I do accept that the Applicant is now more cautious about aboriginal people and that he has become less likely to go out and socialise. He is a young man who was the victim of an unprovoked attack which has left him with lesser enjoyment of life and a lesser ability to remember things which effects his ability to work efficiently.
16. For this aspect it is my view that the Applicant should be awarded \$18000.00
17. **Economic loss** - The Applicant claims that because of the injuries he sustained he was unable to work for 6 weeks because of the headaches and dizziness caused by the injury. In paragraph 19 of his affidavit he sets out his estimated loss of earnings for the period. In his calculations Mr Newhouse did not take into account a reduction from income tax. A later affidavit of Ms Truman explained the applicable tax rate was 25% not taking into account expense for that time. There is no information about expenses and therefore 25% is the tax rate I must apply. It is my view that the Applicant did suffer a loss of earnings during the time he could not work because of the effects of his injury and that the Assistance Certificate should include an amount of \$ 2071.88 for economic loss.

18. **My Orders are:**

1. An Assistance certificate issue for the sum of \$20071.88
2. The First Respondent to pay the Applicant's costs and disbursements to be taxed in default of agreement.

Dated this 6th day of August 2004

Tanya Fong Lim
JUDICIAL REGISTRAR